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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/808,398	03/14/2001	Wolfgang Ludwig	71836-012	3668
7590 05/09/2006		EXAMINER		
McDERMOTT WILL & EMERY LLP		BECKER, DREW E		
600 13TH STREET N.W.		ART UNIT		
WASHINGTON, DC 20005-3096		PAPER NUMBER		

1761

DATE MAILED: 05/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/808,398

Applicant(s)

LUDWIG, WOLFGANG

Examiner

Drew E. Becker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11 and 17-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11, 17-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Response

1. Applicant's arguments, see the Appeal Brief, filed of July 6, 2005, with respect to the rejection(s) of claim(s) 11, 17-41 under Horn et al as the main reference, have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Gould.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 21-22, 29, and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Gould [Pat. No. 4,994,294].

Gould teaches a device comprising a rotating vessel with impact vanes (Figure 1, #10, 62, 64), meat in a treating liquid (Figure 1, #66, 68), means for selectively heating and cooling the vessel (column 6, lines 35-60), a jacket (column 7, line 20), a temperature sensor which controls heating and cooling (column 7, line 10), and the temperature sensor extending through the wall for direct contact with the meat (Figure 1, #134).

Phrases such as "for maintaining... at substantially 45°F to 60°F" and "to substantially reduce formation of..." are merely preferred methods of using the claimed apparatus.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gould as applied above, in view of DE 3119496A.

Gould teaches the above mentioned concepts as well as the temperature sensor extending through the wall for direct contact with the meat (Figure 1, #134). Gould does not recite the temperature sensor having a thrust member, and plural sensing regions along its length. DE 3119496A teaches an apparatus comprising a temperature probe which is thrust into a meat product (Figure 2, #1-2) and plural sensing regions along its length (Figure 3, #I-IV). It would have been obvious to one of ordinary skill in the art to incorporate the temperature probe of DE 31 19496A into the invention of Gould since both are directed to meat processing devices, since Gould already included a temperature sensor which controlled heating and cooling (column 7, lines 1-15), and since the temperature probe of DE 3119496A would have provided a more accurate heating, or cooling, profile due to its sensing of the actual meat temperature at multiple at different depths of the food.

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6. Claims 17, 26-28, 30-32, 34-36, and 38-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gould as applied above, in view of Ludwig [Pat. No. 5,405,630].

Gould teaches the above mentioned components. Gould does not recite a rotary paddle, programming means for controlling torque, or a refrigeration unit. Ludwig teaches a marinating device comprising a rotary paddle (Figure 4, #23), a refrigeration unit (Figure 4, #22), and programming means controlling the torque of the rotary paddles (Figure 4, #30-31). It would have been obvious to one of ordinary skill in the art to incorporate the torque controlled paddles and refrigeration unit of Ludwig into the invention of Gould, since both are directed to meat tumbling devices, since Gould already included a control means (column 7, lines 10-15) and the use of suitable means for heating and cooling the fluid (column 7, line 7), since rotary paddles provided the same agitation and mixing effect as the rotary vessel vanes of Gould, and since Ludwig teaches that torque control provided improved water bonding without damage to the muscle tissue (abstract).

7. Claims 11, 18, 20, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gould, in view of Ludwig, as applied above, and further in view of DE 3119496A.

Gould and Ludwig teach the above mentioned concepts. Gould also teaches the temperature sensor extending through the wall for direct contact with the meat (Figure 1, #134). Gould and Ludwig do not recite the temperature sensor having a thrust member, and plural sensing regions along its length. DE 3119496A teaches an

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apparatus comprising a temperature probe which is thrust into a meat product (Figure 2, #1-2) and plural sensing regions along its length (Figure 3, #I-IV). It would have been obvious to one of ordinary skill in the art to incorporate the temperature probe of DE 31 19496A into the invention of Gould, in view of Ludwig, since all are directed to meat processing devices, since Gould already included a temperature sensor which controlled heating and cooling (column 7, lines 1-15), and since the temperature probe of DE 3119496A would have provided a more accurate heating, or cooling, profile due to its sensing of the actual meat temperature at multiple at different depths of the food.

8. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gould, in view of DE 3119496A, as applied above, and further in view of Schafer et al [Pat. No. 5,139,345].

Gould and DE 3119496A teach the above mentioned components. Gould and DE 3119496A do not recite the temperature sensor being thermally insulated. Schafer et al teach a mixing device comprising a temperature sensor extending the wall of the chamber (Figure 1, #10) and the sensor being thermally insulated (Figure 1, #2). It would have been obvious to one of ordinary skill in the art to incorporate the thermal insulation of Schafer et al into the invention of Gould, in view of DE 3119496A, since all are directed to food preparation and mixing devices, since Gould already included a temperature sensor extending through the wall, since DE 3119496A already included a temperature probe to be thrust into the product, and since the thermal insulation of Schafer et al would have provided more accurate temperature readings of the food product.

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9. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gould, in view of DE 3119946A and Ludwig, as applied above, and further in view of Schafer et al.

Gould, Ludwig, and DE 3119496A teach the above mentioned components. Gould, Ludwig, and DE 3119496A do not recite the temperature sensor being thermally insulated. Schafer et al teach a mixing device comprising a temperature sensor extending the wall of the chamber (Figure 1, #10) and the sensor being thermally insulated (Figure 1, #2). It would have been obvious to one of ordinary skill in the art to incorporate the thermal insulation of Schafer et al into the invention of Gould, in view of DE 3119496A, since all are directed to food preparation and mixing devices, since Gould already included a temperature sensor extending through the wall, since DE 3119496A already included a temperature probe to be thrust into the product, and since the thermal insulation of Schafer et al would have provided more accurate temperature readings of the food product.

Response to Arguments


10. Applicant's arguments with respect to claims 11 and 17-41 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am to 4:30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


DREW BECKER
PRIMARY EXAMINER
5-4-06